

§ 140. Nondiscrimination

(a) Prior to approving any programs for projects as provided for in section 135, the Secretary shall require assurances from any State desiring to avail itself of the benefits of this chapter that employment in connection with proposed projects will be provided without regard to race, color, creed, national origin, or sex. The Secretary shall require that each State shall include in the advertised specifications, notification of the specific equal employment opportunity responsibilities of the successful bidder. In approving programs for projects on any of the Federal-aid systems, the Secretary¹ if necessary to ensure equal employment opportunity, shall require certification by any State desiring to avail itself of the benefits of this chapter that there are in existence and available on a regional, statewide, or local basis, apprenticeship, skill improvement or other upgrading programs, registered with the Department of Labor or the appropriate State agency, if any, which provide equal opportunity for training and employment without regard to race, color, creed, national origin, or sex. In implementing such programs, a State may reserve training positions for persons who receive welfare assistance from such State; except that the implementation of any such program shall not cause current employees to be displaced or current positions to be supplanted or preclude workers that are participating in an apprenticeship, skill improvement, or other upgrading program registered with the Department of Labor or the appropriate State agency from being referred to, or hired on, projects funded under this title without regard to the length of time of their participation in such program. The Secretary shall periodically obtain from the Secretary of Labor and the respective State transportation departments information which will enable the Secretary to judge compliance with the requirements of this section and the Secretary of Labor shall render to the Secretary such assistance and information as the Secretary of Transportation shall deem necessary to carry out the equal employment opportunity program required hereunder.

(b) The Secretary, in cooperation with any other department or agency of the Government, State agency, authority, association, institution, Indian tribal government, corporation (profit or nonprofit), or any other organization or person, is authorized to develop, conduct, and administer surface transportation and technology training, including skill improvement programs, and to develop and fund summer transportation institutes. Whenever apportionments are made under section 104(b)(3) of this title, the Secretary shall deduct such sums as necessary, not to exceed \$10,000,000 per fiscal year, for the administration of this subsection. Such sums so deducted shall remain available until expended. The provisions of section 6101(b) to (d) of title 41 shall not be applicable to contracts and agreements made under the authority herein granted to the Secretary. Notwithstanding any other provision of law, not to exceed ½

of 1 percent of funds apportioned to a State for the surface transportation program under section 104(b) and the bridge program under section 144 may be available to carry out this subsection upon request of the State transportation department to the Secretary.

(c) The Secretary, in cooperation with any other department or agency of the Government, State agency, authority, association, institution, Indian tribal government, corporation (profit or nonprofit), or any other organization or person, is authorized to develop, conduct, and administer training programs and assistance programs in connection with any program under this title in order that minority businesses may achieve proficiency to compete, on an equal basis, for contracts and subcontracts. Whenever apportionments are made under section 104(b)(3), the Secretary shall deduct such sums as necessary, not to exceed \$10,000,000 per fiscal year, for the administration of this subsection. The provisions of section 6101(b) to (d) of title 41 shall not be applicable to contracts and agreements made under the authority herein granted to the Secretary notwithstanding the provisions of section 3106 of title 41.

(d) INDIAN EMPLOYMENT.—Consistent with section 703(i) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2(i)), nothing in this section shall preclude the preferential employment of Indians living on or near a reservation on projects and contracts on Indian reservation roads. States may implement a preference for employment of Indians on projects carried out under this title near Indian reservations. The Secretary shall cooperate with Indian tribal governments and the States to implement this subsection.

(Added Pub. L. 90-495, §22(a), Aug. 23, 1968, 82 Stat. 826; amended Pub. L. 91-605, title I, §110, Dec. 31, 1970, 84 Stat. 1719; Pub. L. 93-87, title I, §120, Aug. 13, 1973, 87 Stat. 259; Pub. L. 94-280, title I, §126, May 5, 1976, 90 Stat. 440; Pub. L. 97-424, title I, §119, Jan. 6, 1983, 96 Stat. 2110; Pub. L. 100-17, title I, §122, Apr. 2, 1987, 101 Stat. 160; Pub. L. 102-240, title I, §1026, Dec. 18, 1991, 105 Stat. 1965; Pub. L. 102-388, title IV, §412, Oct. 6, 1992, 106 Stat. 1565; Pub. L. 105-178, title I, §§1208, 1212(a)(2)(A), June 9, 1998, 112 Stat. 186, 193; Pub. L. 109-59, title I, §1922, Aug. 10, 2005, 119 Stat. 1481; Pub. L. 111-350, §5(e)(1), Jan. 4, 2011, 124 Stat. 3847.)

AMENDMENTS

2011—Subsec. (b). Pub. L. 111-350, §5(e)(1)(A), substituted “section 6101(b) to (d) of title 41” for “section 3709 of the Revised Statutes, as amended (41 U.S.C. 5),”.

Subsec. (c). Pub. L. 111-350, §5(e)(1)(B), substituted “section 6101(b) to (d) of title 41” for “section 3709 of the Revised Statutes, as amended (41 U.S.C. 5),” and “section 3106 of title 41” for “section 302(e) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252(e))”.

2005—Subsec. (a). Pub. L. 109-59, §1922(a), in first sentence, substituted “section 135” for “subsection (a) of section 105 of this title”, in second sentence, substituted “The Secretary” for “He”, in third sentence, substituted “if necessary to ensure” for “shall, where he considers it necessary to assure” and inserted “shall” before “require”, and, in last sentence, substituted “the Secretary to” for “him to” and “the Secretary of Transportation” for “he”.

Subsec. (b). Pub. L. 109-59, §1922(b), in first sentence, substituted “surface transportation” for “highway con-

¹ So in original. Probably should be followed by a comma.

struction" and, in second sentence, struck out "he may deem" before "necessary" and "not to exceed \$2,500,000 for the transition quarter ending September 30, 1976, and" before "not to exceed \$10,000,000".

Subsec. (c). Pub. L. 109-59, §1922(c), substituted "section 104(b)(3)" for "subsection 104(b)(3) of this title" and struck out "he may deem" before "necessary".

Subsec. (d). Pub. L. 109-59, §1922(d), struck out "AND CONTRACTING" after "EMPLOYMENT" in heading.

1998—Subsec. (a). Pub. L. 105-178, §§1208(a), 1212(a)(2)(A)(ii), inserted "In implementing such programs, a State may reserve training positions for persons who receive welfare assistance from such State; except that the implementation of any such program shall not cause current employees to be displaced or current positions to be supplanted or preclude workers that are participating in an apprenticeship, skill improvement, or other upgrading program registered with the Department of Labor or the appropriate State agency from being referred to, or hired on, projects funded under this title without regard to the length of time of their participation in such program." after third sentence and substituted "State transportation departments" for "State highway departments".

Subsec. (b). Pub. L. 105-178, §§1208(b), 1212(a)(2)(A)(i), inserted "and technology" after "highway construction" and "and to develop and fund summer transportation institutes" after "skill improvement programs" and substituted "section 104(b)(3)" for "section 104(b)" and "State transportation department" for "State highway department".

Subsec. (c). Pub. L. 105-178, §1208(c), substituted "104(b)(3)" for "104(a)".

1992—Subsec. (b). Pub. L. 102-388 substituted "1/2 of 1 percent" for "1/4 of 1 percent" in last sentence.

1991—Subsec. (b). Pub. L. 102-240, §1026(a), (b), inserted "Indian tribal government," after "institution," and inserted at end "Notwithstanding any other provision of law, not to exceed 1/4 of 1 percent of funds apportioned to a State for the surface transportation program under section 104(b) and the bridge program under section 144 may be available to carry out this subsection upon request of the State highway department to the Secretary."

Subsec. (c). Pub. L. 102-240, §1026(b), inserted "Indian tribal government," after "institution,".

Subsec. (d). Pub. L. 102-240, §1026(c), inserted after first sentence "States may implement a preference for employment of Indians on projects carried out under this title near Indian reservations."

1987—Subsec. (d). Pub. L. 100-17 added subsec. (d).

1983—Pub. L. 97-424, §119(c), substituted "Non-discrimination" for "Equal employment opportunity" in section catchline.

Subsec. (a). Pub. L. 97-424, §119(a), substituted ", national origin, or sex" for "or national origin" after "color, creed", in two places.

Subsec. (c). Pub. L. 97-424, §119(b), added subsec. (c).

1976—Subsec. (b). Pub. L. 94-280 substituted second sentence "Whenever apportionments are made under section 104(b) of this title, the Secretary shall deduct such sums as he may deem necessary, not to exceed \$2,500,000 for the transition quarter ending September 30, 1976, and not to exceed \$10,000,000 per fiscal year, for the administration of this subsection." for "Whenever an apportionment is made under subsections 104(b)(1), (b)(2), (b)(3), (b)(5), and (b)(6) of this title of the sums authorized to be appropriated for expenditure upon the Federal-aid primary and secondary systems, and their extensions within urban areas, the Interstate System, and the Federal-aid urban system for the fiscal years 1972, 1973, 1974, 1975, and 1976, the Secretary shall deduct such sums as he may deem necessary not to exceed \$5,000,000 per fiscal year for the fiscal years 1972 and 1973, and \$10,000,000 per fiscal year for the fiscal years 1974, 1975 and 1976, for administering the provisions of this subsection to be financed from the appropriation for the Federal-aid systems."

1973—Subsec. (b). Pub. L. 93-87 included apportionment of appropriated moneys for administration of sub-

sec. (b) provisions for fiscal years 1974, 1975, and 1976, and substituted provisions which made available for such administration \$5,000,000 per fiscal year for fiscal years 1972, and 1973, and \$10,000,000 per fiscal year for fiscal years 1974, 1975, and 1976, for prior provision making available \$5,000,000 per fiscal year for such administration.

1970—Pub. L. 91-605 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102-240, set out as a note under section 104 of this title.

EFFECTIVE DATE

Section effective Aug. 23, 1968, see section 37 of Pub. L. 90-495, set out as an Effective Date of 1968 Amendment note under section 101 of this title.

§ 141. Enforcement of requirements

(a) Each State shall certify to the Secretary before January 1 of each year that it is enforcing all State laws respecting maximum vehicle size and weights permitted on the Federal-aid primary system, the Federal-aid urban system, and the Federal-aid secondary system, including the Interstate System in accordance with section 127 of this title. Each State shall also certify that it is enforcing and complying with the provisions of section 127(d) of this title and section 31112 of title 49.

(b)(1) Each State shall submit to the Secretary such information as the Secretary shall, by regulation, require as necessary, in his opinion, to verify the certification of such State under subsection (b) of this section.

(2) If a State fails to certify as required by subsection (b) of this section or if the Secretary determines that a State is not adequately enforcing all State laws respecting such maximum vehicle size and weights, notwithstanding such a certification, then Federal-aid highway funds apportioned to such State for such fiscal year shall be reduced by amounts equal to 10 per centum of the amount which would otherwise be apportioned to such State under section 104 of this title.

(3) If within one year from the date that the apportionment for any State is reduced in accordance with paragraph (2) of this subsection the Secretary determines that such State is enforcing all State laws respecting maximum size and weights, the apportionment of such State shall be increased by an amount equal to such reduction. If the Secretary does not make such a determination within such one-year period, the amounts so withheld shall be reapportioned to all other eligible States.

(c) The Secretary shall reduce the State's apportionment of Federal-aid highway funds under section 104(b)(4) in an amount up to 25 per centum of the amount to be apportioned in any fiscal year beginning after September 30, 1984, during which heavy vehicles, subject to the use tax imposed by section 4481 of the Internal Revenue Code of 1986, may be lawfully registered in the State without having presented proof of payment, in such form as may be prescribed by the